

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

AARON HICKS,

Petitioner

v.

23-CV-166-A
15-CR-33-A

UNITED STATES OF AMERICA,

Respondent.

NOTICE OF MOTION AND MOTION TO ADJOURN RESPONSE DATE

THE UNITED STATES OF AMERICA, by and through its attorney, Trini E. Ross, United States Attorney for the Western District of New York, Garrett Fitzsimmons, Assistant United States Attorney, of counsel, hereby files this request for an adjournment of the government's responses to the Petitioner's motions at ECF Nos. 964, 1015, and 1021 pending the resolution of Petitioner's recent appeal. *See* ECF No. 1064.

DATED: Buffalo, New York, February 6, 2023.

TRINI E. ROSS
United States Attorney

BY: s/GARRETT FITZSIMMONS
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

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AFFIRMATION

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

GARRETT FITZSIMMONS, swears and affirms:

1. I am an Assistant United States Attorney for the Western District of New York assigned to the prosecution of the above-referenced case. This affirmation is submitted in support of the government's motion to adjourn the government's response to the Petitioner's motions at ECF Nos. 964, 1015, and 1021 pending the resolution of Petitioner's recent appeal. *See* ECF No. 1064.

2. On August 14, 2023, Petitioner filed a motion for recusal, requesting that "the Court recuse itself from and [] all further proceedings in this matter in accordance with 28 USC §455(a) and §455(b)." ECF No. 1022 at 5. The basis of Petitioner's motion was, in part, an allegation that this Court had an improper *ex parte* communication with a juror during Petitioner's trial. At the time Petitioner filed his motion for recusal, Petitioner had filed several

other motions to which the government had not yet responded. *See* ECF Nos. 964, 1005, 1015 and 1021.

3. On August 25, 2023, the government moved to hold in abeyance the government's response deadlines to Petitioner's other motions while the Court resolved Petitioner's motion for recusal. ECF No. 1025 at 2. On August 28, 2023, the Court granted the government's motion. ECF No. 1027.

4. On January 16, 2024, the Court denied Petitioner's motion for recusal. ECF No. 1058. The Court then ordered the government to respond to Petitioner's remaining motions by February 29, 2024. *Id.*

5. On January 30, 2024, Petitioner filed a notice of appeal on this Court's denial of Petitioner's motion for recusal.

6. Because the issue of recusal is now contested on appeal, the Court should adjourn the government's response deadline until the issue is resolved.

WHEREFORE, the government requests that the Court adjourn the government's response deadlines to Petitioner's remaining motions until Petitioner's motion for recusal is resolved on appeal.

s/GARRETT FITZSIMMONS
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

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CERTIFICATE OF SERVICE

I hereby certify, that on February 6, 2024, I filed the foregoing, **NOTICE OF MOTION AND MOTION TO ADJOURN RESPONSE DATE**, with the Clerk of the Court, and I mailed the foregoing, via the United States Postal Service, to the following individual(s):

Aaron Hicks, 33995055
MCKEAN FCI
Inmate Mail/Parcels
P.O. BOX 8000
BRADFORD, PA 16701

s/DANIELLE BROAD